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11 UNITED STATES DISTRICT COURT  
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA, )

14 Plaintiff, )

15 'v. )

16 STEVEN G. COOPERMAN, )

17 Defendant. )  
18

No. CR 06-0776(A)-JFW

GOVERNMENT'S SENTENCING  
MEMORANDUM

Sentencing Date: November 3, 2008  
Time: 9:00 a.m.  
Court: Hon. John F. Walter

19 Plaintiff United States, by and through its counsel of record, Assistant  
20 United States Attorney Richard E. Robinson, hereby submits its Sentencing  
21 Memorandum regarding the Court's sentencing of defendant Steven G.  
22 Cooperman.

23 October 28, 2008

24 THOMAS P. O'BRIEN  
United States Attorney  
25 GEORGE S. CARDONA  
Chief Assistant United States Attorney

26 /s/  
27 RICHARD E. ROBINSON  
Assistant United States Attorney  
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28 United States of America

## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. INTRODUCTION**

Defendant Steven G. Cooperman ("Cooperman") faces sentencing by the Court following his guilty plea on July 10, 2007 to a one count first superseding information charging him with conspiracy, in violation of 18 U.S.C. § 371. Cooperman's guilty plea, pursuant to his January 30, 2007 plea agreement with the government ("Plea Agreement"), resulted from his participation in a conspiracy to obstruct justice (18 U.S.C. § 1503) and to make false declarations to federal courts (18 U.S.C. § 1623(a)) in class action cases filed throughout the United States. See Dkt # 21, 22, 41. During the course of the conspiracy, Cooperman was paid millions of dollars in kickbacks by the Milberg Weiss law firm for serving, and providing his relatives and associates to serve, as named plaintiffs in class actions brought by Milberg Weiss, which Cooperman concealed from the courts presiding over those class actions.

The Probation Officer has determined that Cooperman's total offense level is 14, his criminal history category is II, and his advisory Sentencing Guideline range is 18 to 24 months. See Presentence Investigative Report disclosed September 12, 2008 ("PSR"). Cooperman and the government agree with the Probation Officer's guideline determinations.

The government recommends that Cooperman be sentenced to 9 months in prison, a three year term of supervised release, a fine of \$40,000, and a special assessment of \$100.

### **II. ADVISORY SENTENCING GUIDELINES**

The parties and the Probation Officer have no disputes concerning the applicable advisory Sentencing Guidelines calculations, which are as follows:

#### **A. Adjusted Offense Level**

The base offense level for defendant's offense is 12. U.S.S.G. § 2J1.3. A three-level increase applies because Cooperman's offense conduct resulted in

substantial interference with the administration of justice. U.S.S.G. § 2J1.2(b)(2). A two-level increase applies because Cooperman's conduct constituted abuse of a position of trust in a manner that significantly facilitated the commission or concealment of the offense. U.S.S.G. § 3B1.3. This results in an adjusted offense level of 17.<sup>1</sup> See PSR ¶¶ 31-40; Plea Agreement ¶ 14.

#### B. Total Offense Level

The adjusted offense level of 17 is reduced two levels because Cooperman has demonstrated acceptance of responsibility for his offense; and reduced by one level because Cooperman timely notified the government of his intention to enter a plea of guilty. U.S.S.G. §§ 3E1.1(a), (b)(2); Plea Agreement ¶¶ 14, 18(c); PSR ¶¶ 41-42. This results in a total offense level of 14.

#### C. Advisory Guidelines Range

Cooperman has three criminal history points based on his prior conviction in United States v. Steven G. Cooperman, No. CR 98-1184-ER (hereinafter "CR 98-1184-ER"), and therefore is in criminal history category II. PSR ¶¶ 46-53. Assuming a total offense level of 14, Cooperman's advisory guideline range is 18 to 24 months imprisonment. PSR ¶ 100.

#### D. Fine

The advisory guideline fine range for Cooperman, based on a total offense level of 14, is \$4,000 to \$40,000. U.S.S.G. § 5E1.2; PSR ¶ 111.

### III. **GOVERNMENT'S SENTENCING RECOMMENDATION**

#### A. The Government's Recommendation

The government recommends that Cooperman be sentenced to a term of 9 months imprisonment, a three year term of supervised release, a fine of \$250,000, and a special assessment of \$100. The government submits that the recommended

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<sup>1</sup> The parties and the Probation Officer agree that the applicable Sentencing Guidelines for defendant's offense conduct are set forth in the Guidelines manual in effect November 1, 1998, as use of the current version of the manual would raise ex post facto issues. PSR ¶ 29.

1 sentence is sufficient, but not greater than necessary, to comply with the purposes  
2 of 18 U.S.C. § 3553(a)(2).

3 B. Nature and Circumstances of the Offense

4 From 1988 and continuing until at least 1999, Cooperman and certain of his  
5 relatives and associates served as named plaintiffs in approximately 70 class  
6 actions and shareholder derivative actions brought by the Milberg Weiss law firm  
7 throughout the United States. Beginning in 1988 and continuing through  
8 approximately 1997, Cooperman had an arrangement with Milberg Weiss and its  
9 senior partners Melvyn Weiss, William Lerach, and David Bershad, by which  
10 Milberg Weiss would pay Cooperman a substantial amount of the attorneys' fees  
11 that Milberg Weiss obtained in the lawsuits in which Cooperman or one of his  
12 associates or relatives served as a name plaintiff, as well as other lawsuits in which  
13 Cooperman provided information for use by Milberg Weiss.

14 Cooperman solicited Cooperman Plaintiff 1 and Cooperman Plaintiff 2 to  
15 participate in the conspiracy, and shared with them payments he received in  
16 connection with lawsuits in which these individuals served as named plaintiffs.  
17 Pursuant to this arrangement, Milberg Weiss made a total of more than \$6.1  
18 million in payments for the benefit of Cooperman, Cooperman Plaintiff 1, and  
19 Cooperman Plaintiff 2. Cooperman's personal share of the kickback payments  
20 was approximately \$5.8 million. Cooperman received the kickbacks in several  
21 ways: (a) cash delivered to Cooperman by Lerach; (b) a phony art option payment  
22 by Weiss and phony "retainer" payments by Milberg Weiss to Cooperman's then  
23 brother-in-law; and (c) Milberg Weiss checks issued by Bershad to Cooperman's  
24 selected intermediaries, James Tierney, Richard Purtich or one of Purtich's  
25 associated law firms, disguised as fees that Milberg Weiss owed to these lawyers.

26 Cooperman understood that his payment arrangement with Milberg Weiss,  
27 and they payments themselves, had to be kept secret from the court presiding over  
28 the lawsuits in which Cooperman and his relatives and associates served as named

1 plaintiffs. Cooperman understood that Weiss, Lerach, and Bershad also intended  
2 to keep Cooperman's payment arrangement with Milberg Weiss secret.  
3 Cooperman understood that, if a court learned about his payment arrangement  
4 with Milberg Weiss, it could affect the court's decisions (a) to certify the case as a  
5 class action and/or shareholder derivative action; (b) to approve Cooperman as a  
6 representative plaintiff; (c) to approve Milberg Weiss as class counsel; and (d)  
7 concerning the award of attorneys' fees to Milberg Weiss.

8 As a result, in furtherance of the conspiracy Cooperman repeatedly made  
9 false and misleading statements to conceal the kickback arrangement in (a) his  
10 answers to interrogatories in Columbia Savings & Loan and Fairfield  
11 Communities; (b) his deposition testimony in Fairfield Communities, Valley  
12 National, and Jan Bell Marketing; (c) his affidavit in One Bancorp; and (d) his  
13 certification Individual, Inc. See PSR ¶¶ 9-24.

14 C. The History and Characteristics of the Defendant

15 In 1999, in the matter United States v. Cooperman, CR 98-1184-ER,  
16 Cooperman was convicted following a jury trial of conspiracy (18 U.S.C. § 371),  
17 wire fraud (18 U.S.C. § 1343), interstate transportation of stolen property (2314),  
18 unlawful monetary transactions (18 U.S.C. § 1957), false statements to a financial  
19 institution (18 U.S.C. § 1014), and subscribing to a false tax return (26 U.S.C.  
20 § 7206). The convictions arose from a fraud scheme in which Cooperman (a)  
21 falsely reported that original Monet and Picasso oil paintings had been stolen from  
22 his Brentwood home in 1992; (b) made a fraudulent theft loss claim to the insurers  
23 of the paintings; (c) falsely reported the theft to a bank that had lent Cooperman \$4  
24 million secured by the paintings; (d) collected \$17.5 million in 1993 from the  
25 victim insurers in settlement of his bogus theft claim; and (e) failed to report on  
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1 his 1993 tax return \$5 million of the insurance proceeds he had received.<sup>2</sup>

2        Soon after his trial, Cooperman brought to the government's attention the  
3 Milberg Weiss paid plaintiff scheme, and offered his assistance in investigating  
4 such conduct. In a Case Disposition Agreement between Cooperman and the  
5 government dated August 22, 2000, Cooperman formally agreed to cooperate with  
6 the government's investigation of the Milberg Weiss kickback scheme and the  
7 government agreed not to prosecute Cooperman for violations of federal law  
8 relating to his conduct in that scheme. Consistent with the Case Disposition  
9 Agreement, the government also conferred on Cooperman substantial benefits in  
10 connection with his sentencing on the art fraud case, in which he faced a guideline  
11 range of the 78 to 97 months, based on a total offense level of 28 and criminal  
12 history category I. First, the government made a six-level Section 5K1.1  
13 downward departure motion based on Cooperman's substantial assistance and also  
14 stipulated to a one-level downward departure based on Cooperman's extraordinary  
15 charitable contributions. After adopting the government's recommendation, the  
16 Hon. Edward Rafeedie reduced Cooperman's offense level from 28 to 21 and  
17 sentenced Cooperman to 37 months imprisonment.

18        Following his sentencing, Cooperman continued to cooperate while in  
19 custody. Such cooperation was particularly onerous on Cooperman, because he  
20 had to transfer from a low-security Bureau of Prisons facility in Massachusetts to  
21 the Metropolitan Detention Center in Los Angeles. During a significant portion of  
22 the time Cooperman was housed in Los Angeles, the Marshal housed him at Kern  
23 County Jail. Meeting with government agents to review documents and provide  
24 information required long and difficult days, much of which were spent in transit  
25 to and from lock-up.

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27        <sup>2</sup> To facilitate his commission of this offense, Cooperman used Milberg  
28 Weiss kickback payments in two ways: (1) to pay Tierney for removing and hiding  
the art work from Cooperman's home (so that Cooperman could make his  
fraudulent insurance claim); and (2) to pay Purtich for suing the insurance  
companies for the purported loss.



1 To credit his continuing cooperation, the government made a Rule 35  
2 motion to further reduce his sentence. As a result of the government's motion,  
3 Judge Rafeedie further reduced Cooperman's sentence the equivalent of four  
4 levels, from 37 to 24 months imprisonment. (The government had asked for the  
5 equivalent of a five-level reduction.) Cooperman actually served about 21 months  
6 in custody and was released in July 2003. In total, Cooperman's cooperation from  
7 1999 through 2002 resulted in his receiving Section 5K1.1 and Rule 35 sentencing  
8 reductions equivalent to 10 Guidelines offense levels, or about 50 months.<sup>3</sup>

9 In 2006, the government learned that Cooperman had engaged in fraud and  
10 forgery in connection with several disability insurance policies while he was in  
11 custody in Los Angeles cooperating with the government. The government  
12 investigated the fraud, determining that Cooperman forged his Connecticut  
13 cardiologist's signature on several insurance forms attesting to Cooperman's  
14 continuing disability, and made false statements on those forms designed to  
15 conceal the fact that Cooperman was in jail. The forms were submitted in order to  
16 continue to receive benefits under pre-existing disability insurance policies  
17 Cooperman had with several insurance companies, including Unum, Jefferson  
18 Pilot, and Nationwide Mutual. There was evidence that the forms were  
19 transmitted to and from Cooperman through his criminal defense attorneys and, in  
20 sealed envelopes, through the government agents who were meeting with  
21 Cooperman to debrief him on the Milberg Weiss scheme. Although the fraud was  
22 material, in that the insurance companies would have wanted to know that  
23 Cooperman was in jail and not being seen by his treating cardiologist, ultimately  
24 the fraud caused no losses to the insurance companies. After they learned of the  
25 fraud, none of Cooperman's insurance companies sought to cancel Cooperman's

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27 <sup>3</sup> After December 2002, Cooperman had five phone calls and one meeting  
28 with agents during which he clarified and elaborated on certain aspects of his prior  
statements concerning various Milberg Weiss scheme participants. These brief  
communications did not provide substantial assistance as to any new matters.

1 disability policies or to avoid future payments; none have asserted that Cooperman  
2 was not in fact “disabled” during the time he was in prison.

3 Despite the absence of monetary loss to the insurance companies, the  
4 government viewed Cooperman’s fraud and forgery to be a material breach of the  
5 Case Disposition Agreement. The government knew when entering into the Case  
6 Disposition Agreement that Cooperman’s prior conduct created substantial  
7 credibility issues should he testify at trial. Thus the government went to  
8 extraordinary lengths to corroborate Cooperman’s proffered testimony, and was  
9 prepared to do so at trial. However, Cooperman’s commission of insurance fraud  
10 and forgery during the same time he was cooperating with the government – using  
11 the unknowing assistance of government agents to transmit some of the forged  
12 forms to or from Cooperman – rendered his testimony virtually unusable.

13 When he was eventually confronted, Cooperman admitted that he had  
14 forged the disability insurance forms while in prison and made false statements on  
15 the forms designed to conceal the fact he was in prison. Ultimately, Cooperman  
16 also agreed that his actions constituted a material breach of the Case Disposition  
17 Agreement. Such breach (a) relieved the government of its commitment not to  
18 prosecute Cooperman with regard to his conduct in the Milberg Weiss kickback  
19 scheme and (b) allowed the government to use against Cooperman his admissions  
20 concerning the existence of the scheme and his involvement in it. After he was  
21 indicted, Cooperman decided to plead guilty to the offense for which he now faces  
22 sentencing. Cooperman’s plea agreement did not contain any ongoing cooperation  
23 provisions.

24 C. The Recommended Sentence Is Reasonable And Appropriate

25 A district court at sentencing is to “impose a sentence sufficient, but not  
26 greater than necessary,’ to reflect the seriousness of the offense, promote respect  
27 for the law, and provide just punishment; to afford adequate deterrence; to protect  
28 the public; and to provide the defendant with needed educational or vocational



1 training, medical care, or other correctional treatment.” United States v. Carty,  
2 520 F.3d 984, 991 (9th Cir. 2008) (en banc); 18 U.S.C. § 3553(a) and (a)(2).

3 The government believes that a 9 month prison sentence, followed by three  
4 year of supervised release, and the imposition of a \$40,000 fine, would  
5 appropriately reflect the seriousness of the sentence, promote respect for law, and  
6 provide just punishment. The government believes that the sentence is necessary  
7 to satisfy the purposes of sentencing for the following reasons:

8 First, the nature and circumstances of Cooperman’s criminal conduct are no  
9 doubt serious. His role in the kickback scheme spanned many years, implicated  
10 numerous cases litigated in federal and state courts, and was very profitable for  
11 Cooperman. Cooperman’s offense conduct was the most culpable of the paid  
12 plaintiffs convicted by the government. The number of lawsuits in which  
13 Cooperman and his relatives and associates served as named plaintiffs was slightly  
14 more (70) than the number of lawsuits involving Seymour Lazar and his relatives  
15 (67) and Howard Vogel and his relatives (40) as named plaintiffs. Nonetheless,  
16 Cooperman’s share of the kickbacks (\$5.8 million) substantially exceeded the total  
17 amount of kickbacks that Milberg Weiss paid to Seymour Lazar (\$2.6 million) and  
18 Howard Vogel (\$2.5 million). Also, Cooperman, unlike Lazar and Vogel,  
19 solicited non-family members (Cooperman Plaintiff 1 and Cooperman Plaintiff 2)  
20 to join the conspiracy as paid plaintiffs.

21 Second, Cooperman’s criminal record is more significant than Lazar and  
22 Vogel, neither of whom have prior convictions.

23 Third, and most importantly in the government’s view, a significant  
24 sentence of Cooperman is necessary in light of the huge sentencing reduction  
25 Cooperman received in CR 98-1184-ER predicated on his cooperation, and his  
26 subsequent breach of the agreement by which he obtained that reduction.  
27 Cooperman’s substantial sentence reduction contemplated that Cooperman would  
28 continue to be able to provide at trial the credible evidence that he had provided

1 during his debriefings, and that he would not engage in any new misconduct that  
2 would adversely affect his credibility. Cooperman's commission of fraud and  
3 forgery offenses at the same time he was cooperating materially deprived the  
4 government of the benefit of the bargain it had struck with Cooperman, pursuant  
5 to which Cooperman had already received a very substantial sentencing reduction.  
6 The need to promote respect for the law requires that an individual who decides to  
7 enter into a cooperation agreement with the government, and subsequently  
8 breaches the agreement by committing serious new criminal offenses, should have  
9 to pay a price for the breach. Cooperman received a sentencing benefit of roughly  
10 50 months in exchange for his cooperation and agreement to continue to  
11 cooperate; "giving back" nine of those months is not too severe a penalty for his  
12 material breach of that agreement.

13 On the other hand, a sentence greater than nine months is not necessary to  
14 satisfy the Section 3553(a) factors with respect to Cooperman, for several reasons:

15 First, Cooperman's age of 66, coupled with his poor health condition, weigh  
16 against the need for more extended imprisonment. See PSR ¶¶ 70-76, describing  
17 Cooperman's physical condition.

18 Second, more extended imprisonment is not needed to protect the public.  
19 Cooperman's participation as a paid plaintiff ended almost a decade ago and there  
20 is little risk that he could or would become involved in such a fraudulent scheme  
21 again.

22 Third, more extended imprisonment is not needed to provide Cooperman, at  
23 this late point in his life and given his health condition, with educational or  
24 vocational training.

25 Fourth, Cooperman stands convicted of participating in the Milberg Weiss  
26 conspiracy based primarily on the information Cooperman himself provided to the  
27 government.

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1 Fifth, a sentence of greater than nine months would tend to create an  
2 unwarranted sentencing disparity as compared with Steven Schulman, whose  
3 culpability in the offense substantially exceeded that of Cooperman and whose  
4 cooperation with the government, although meaningful, was not timely given.

5 **IV. CONCLUSION**

6 For the foregoing reasons, the Court should (a) determine the applicable  
7 guideline range to be 18 to 24 months, based on an offense level 14 and criminal  
8 history category II; and (b) sentence Cooperman to a term of 9 months  
9 imprisonment, followed by a three year term of supervised release, and impose a  
10 fine of \$40,000 and a special assessment of \$100.